

## REMARKS

### I. Status of the Claims

Claims 1-41 are pending. Claims 1, 6, 20, and 35-41 are independent claims. Claims 31-41 are new claims.

New claims 31-32 are dependent product claims, directed to products on which the image has a specified high resolution. New claims 33-34 are dependent method claims, directed to the corresponding method achieving the specified high resolution.

Support for these claims may be found in the specification at least at page 15, paragraph [0054].

New claims 35 and 36 are independent claims directed to an embodiment in which the wax based ink comprises pigment, which is not used with a fat or wax dispersible carrier for the pigment. An independent product claim and an independent method claim have been presented directed to this embodiment. Support for these claims may be found at least in Examples 23 and 24 of Table 2, in which a pigment colorant is used, but without a carrier.

New claims 37-41 are previously presented claims, rewritten as independent claims.

The Office Action did not set forth a rejection of claims 5 and 8, even though those claims were said to be rejected in the Office Action Summary. Claim 23 is listed on the Office Action Summary as both rejected and objected to, but allowable if rewritten in independent form. Applicants respectfully request that the Examiner clarify the status of claims 5, 8 and 23 on the record.

II. Allowable Subject Matter

The early indication of allowable subject matter is gratefully acknowledged.

Claim 2 has been rewritten as independent claim 37, and claim 2 has been cancelled.

Claims 7 and 16 have been rewritten in independent form. Claim 9 has been rewritten as independent claim 38, and claim 9 has been cancelled. Claim 18 has been rewritten as independent claim 39, and claim 18 has been cancelled. Claim 24 has been rewritten as independent claim 40, and claim 24 has been cancelled. Claim 27 has been rewritten as independent claim 41, and claims 26 and 27 have been cancelled. Applicants submit that these new independent claims are in condition for allowance.

III. Rejections Over Prior Art

Claims 1, 3-4, 6, 10-15 and 18 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2003/0101902 A1 to Reitnauer et al., and Claims 20, 25-26, and 28-30 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Reitnauer in view of WO 01/94116 A2, which is commonly assigned with the present application. These rejections are respectfully traversed.

All of the claims herein, except for new claims 34 and 35, recite an edible ink (or an image formed from the ink) which has a colorant, and a fat or wax dispersible carrier for the colorant. In preferred embodiments, the fat or wax dispersible carrier is glycerol, propylene glycol or a mixture thereof, as claimed in claim 9, which the Examiner indicated as being allowable if rewritten in independent form. In Reitnauer, the colorant is added directly to the wax base (see paragraph [0032]) with no particular disclosure of an

agent for dispersing or dissolving the colorant in the wax. Although apparently provided as a “dispersion,” (see para. [0038]), there is no disclosure that the disclosed Apocarotenal colorant is provided in a fat or wax dispersible carrier.

This distinction is particularly important in those claims directed to preferred embodiments in which an FD&C dye is used as the colorant, as set forth in claim 13, for example. Those of ordinary skill in the art will recognize that all such dyes are water soluble, and therefore reliably providing them in a carrier, close to the solubility limit of the carrier for the dye, such that the carrier which will also disperse them in a fat or wax base is a greater technical challenge. Therefore, the present claims are believed to distinguish over Reitnauer at least because Reitnauer does not require a fat or wax dispersible carrier for the colorant.

Reitnauer incidentally discloses the use of glycerin (glycerol) at paragraph [0031]. However, the ingredient is included in a class of “oils, flexibilizers and plasticizers,” and there is no disclosure of using this ingredient as a carrier for a colorant, or of an amount of glycerin that would dissolve or disperse the colorant such that it could act as a carrier. In contrast, in the examples herein, the colorant is solubilized or dispersed in the carrier prior to dispersion in the wax. Therefore, Reitnauer does not disclose a glycerol carrier.

Another important feature of the present invention is that the novel inks permit much higher resolution images than are achieved in the prior art. The Examiner has recognized allowable subject matter in claim 2, which claims edibles having images printed in wax based edible inks having a dpi of greater than 300 dpi. Applicants submit that the

highest dpi achievable using the Markem printhead according to paragraph [0033] in Reitnauer, is 96 dpi. Thus, the claimed lower limit of 100 dpi set forth in claim 1 should be found allowable, and certainly the 150 dpi lower limit claimed in new dependent claims 31 and 33. Reconsideration of the claims and consideration of the new claims is respectfully requested.

In view of the foregoing amendments and remarks, favorable reconsideration and the early passage to issue of this application are respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



---

Brendan Mee  
Attorney for Applicants  
Registration No. 43,391

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

NY\_MAIN 457865v1